No. 02-641

NOV 25 2002

In The

Supreme Court of the United States

ESTATE OF SHANE G. SORRELLS, by and through its independent executrix, Sheryl Thostenson, DANA FONTENOT, as next friend of Chandler Sorrells, a minor, PAT SORRELLS, and RITA SORRELLS,

Petitioners,

v.

CITY OF DALLAS, JOSEPH CUTRONA, WILLIAM READDY, and STANLEY GRIFFIS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners assert that the only element at issue in this proceeding regarding municipal liability under 42 U.S.C. § 1983 is whether they have established the existence of a municipal policy. (Pet. at i.) The City of Dallas ("City") also argued in the courts below, however, that Petitioners failed to establish the other elements necessary for municipal liability. But because the court of appeals correctly held that Petitioners had failed to identify a municipal policy that resulted in a constitutional violation, it was unnecessary for that court to address the other elements. Thus, while the only issue presented in this Petition is whether Petitioners have identified a municipal policy, it is not the only issue preventing Petitioners from overcoming the City's entitlement to summary judgment.

The questions presented by Petitioners are properly characterized by the following single question:

> 1. Does the court of appeals' holding that Petitioners failed to identify a municipal policy that caused a constitutional violation, along with that court's concomitant refusal to hold that a police chief's adoption of the findings and recommendations of an internal affairs investigation into an officer's conduct constitutes a ratification of or policy statement regarding that conduct, merit review by this Court?

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

The parties to the proceeding in the court of appeals are the Estate of Shane G. Sorrells, by and through its independent executrix Sheryl Thostenson, Dana Fontenot, as next friend of Chandler Sorrells, a minor, Pat Sorrells, and Rita Sorrells, who are appellees and cross-appellants in the court of appeals and plaintiffs in the district court; the City of Dallas, which is cross-appellee in the court of appeals and defendant in the district court; and Joseph Cutrona ("Cutrona"), William Readdy ("Readdy"), and Stanley Griffis ("Griffis"), who are appellants in the court of appeals and defendants in the district court.

In addition, the individual Respondents in this proceeding, Cutrona, Readdy, and Griffis,[1] are the petitioners in No. 02-559, filed in this Court on October 8, 2002, docketed on October 10, 2002, and in which the Petitioners herein are the respondents. That petition, which is based on the same incident and seeks review of the same court of appeals' judgment as the petition in the instant proceeding, concerns the court of appeals' disposition of the individual officers' interlocutory appeal of the denial of their motion for summary judgment based on qualified immunity.

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[1] Although Petitioners have named Cutrona, Readdy, and Griffis as Respondents, Petitioners' appeal in the court of appeals involved only the summary judgment granted in favor of the City. Nevertheless, even though the City is the only proper Respondent to the Petition in this Court, this brief in opposition is submitted on behalf of all named Respondents.

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CITATIONS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

The per curiam opinion of the court of appeals, No. 01-10610, is not reported and is attached as Exhibit A to the Petition. (App. at 1-10.)[2] The district court's order in Civil Action No. 3:99-CV-1185-P is not reported. (Supp. App. at 25-26.) The findings and recommendation of the United States magistrate judge in the district court action is not reported. (Supp. App. at 1-24.)

BASIS FOR JURISDICTION IN THIS COURT

The judgment of the court of appeals was entered on July 10, 2002. Respondents agree with Petitioners' statement regarding this Court's jurisdiction.

CONSTITUTIONAL PROVISIONS, STATUTES, AND OTHER AUTHORITIES INVOLVED IN THE CASE

Respondents disagree with Petitioners' assertion that the Petition involves the First, Fifth, and Eighth Amendments to the United States Constitution, or the Due Process or Equal Protection Clauses of the Fourteenth Amendment. The following constitutional provisions, statutes, and other authorities are involved in the case:

[2] "App." refers to the Appendix attached to the Petition. "Supp. App." refers to the Supplemental Appendix filed by Petitioners.

(1) U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(2) U.S. Const. amend. XIV, § 1 (in pertinent part)

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . .

(3) 42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall

be considered to be a statute of the District of Columbia.

(4) Rule 10, Supreme Court Rules

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

. . . .

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of

erroneous factual findings or the misapplication of a properly stated rule of law.

(5) Rule 15(2), Supreme Court Rules (in pertinent part)

In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition.

(6) Rule 56(b), Federal Rules of Civil Procedure

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(7) Rule 56(c), Federal Rules of Civil Procedure (in pertinent part)

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(8) Dallas City Charter ch. III, § 1 (in pertinent part)

> Except as otherwise provided by this Charter, all powers conferred on the city shall be exercised by a city council. . . .

(9) Dallas City Charter ch. VI, § 1 (in pertinent part)

> The council shall appoint a city manager, who shall be the chief administrative and executive officer of the city. . . . The city manager . . . shall be removable at the will and pleasure of the council upon a two-thirds vote of the members of the council. . . .

(10) Dallas City Charter ch. VI, § 2 (in pertinent part)

> The powers and duties of the city manager shall be as follows:
>
> (1) To be responsible to the council for the proper administration of all the city affairs placed in his hands, and shall to that end appoint and employ all directors of departments and other employees not otherwise provided for in this Charter or by ordinance. Appointments made by him shall be on the basis of executive and administrative experience and ability and of training fitness and efficiency of such appointees in the work which they are to administer. All such directors of departments shall be immediately responsible to the city manager and may be removed by him at any time.
>
> . . . .

(3) Except as otherwise provided by the Charter of the City of Dallas, to appoint and remove all heads of departments. . . .

(4) To exercise control over all departments and subdivisions thereof created by the Charter, or that may hereafter be created by the council, except as hereinafter provided.

(11) Dallas City Charter ch. XII, § 2 (in pertinent part)

The chief of police shall:

(1) have immediate direction and control of the police department, subject to the supervision of the city manager, and also subject to such rules, regulations and orders as the city manager may prescribe. . . .

(12) Dallas City Charter ch. XII, § 4

The chief of police shall have the right to suspend for a definite time or discharge any of the officers or employees who may be under the chief's jurisdiction and control for incompetence, neglect of duty, immorality, drunkenness, or failure to obey orders given by the proper authority, or the orders, rules, and regulations promulgated by the chief of police. If any officer or employee is suspended or discharged, as herein provided, the chief of police shall forthwith in writing certify the fact, together with the cause for the action, to the city manager. The officer or employee suspended or discharged shall have five days

> from receipt of notice of such action within which to demand a hearing before the city manager, but such demand must be made in writing. If demanded, the city manager shall proceed to inquire into the cause of the suspension or discharge and render judgment thereon, which judgment, if the charge is sustained, may be suspension, reduction in rank, discharge, or such modification or amendment as may seem just and equitable to the city manager under all the facts and circumstances of the particular case. Such judgment is final unless a discharged officer or employee desires to exercise the right of a public hearing before a trial board as provided by this Charter.

STATEMENT OF THE CASE

Except as follows, Respondents do not dispute, for purposes of the Petition, Petitioners' Statement of the Case.

Petitioners allege that when Cutrona and Readdy first encountered Shane G. Sorrells ("Sorrells"), Sorrells was high on cocaine, nude, masturbating, and disoriented. (Pet. at 2.)[3] The record does not support the allegation or

[3] Petitioners cite the court of appeals' opinion and the report of the Dallas Police Department Internal Affairs Division, contained in their Appendix, as support for their factual allegations regarding the underlying incident. They do not cite any other summary judgment evidence. Because the determination of those underlying facts is not necessary to the questions presented in the Petition, Respondents have likewise not cited other portions of the summary judgment evidence.

(Continued on following page)

inference that Cutrona and Readdy knew or believed when they first encountered Sorrells that he was high on cocaine or disoriented.

Respondents dispute the allegations in the last paragraph of page 3 of the Petition. The three backup officers did not arrive until Sorrells had already moved across the alley to the second parking lot. (*See* Pet. at 3.) The struggle involving the officers and Sorrells was not "one-sided," and Respondents dispute that any of the officers struck Sorrells between 25 and 30 times with a baton, (*see id.*), although Respondents acknowledge that Petitioners' summary judgment evidence contains a statement, to which Respondents objected in the courts below, to that effect from a civilian witness. And while the individual Respondents did use strikes on Sorrells, their "hit[s] and kick[s]," (*see id.*), were reasonable attempts to restrain and gain compliance from Sorrells.

Respondents dispute Petitioners' allegation that Readdy used a "chokehold" on Sorrells, and while he did use a Lateral Vascular Neck Restraint ("LVNR"), Respondents dispute Petitioners' allegation that it was administered "so poorly." (*See id.* at 4.) Respondents further dispute Petitioners' allegation that it would be difficult, if not impossible, to apply a Lateral Vascular Neck Restraint ("LVNR") to a struggling individual without putting compression across the windpipe. (*See id.* at 4 n.2.) Respondents also dispute Petitioners' allegation that no one

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Those underlying facts could bear on the issues before the Court if certiorari is granted, however, so Respondents address the perceived misstatements of fact at this time as required by Rule 15(2) of the Supreme Court Rules.

on the scene applied CPR. (*See id.* at 4.) In addition, there is no evidence in the summary judgment record to support Petitioners' allegation that an officer "crushed Mr. Sorrells' windpipe." (*See id.*) Likewise, the allegation that "[a]n autopsy revealed that he had suffered a crushed larynx," (*see id.* at 4), mischaracterizes the autopsy report, which stated that Sorrells had suffered fractures to the larynx, not a "crushed" larynx, and does not state that those fractures caused his death.

Respondents dispute any allegation or inference by Petitioners that the Dallas Police Department's ("DPD") general orders, code of conduct, or operating procedures are municipal policies. (*See id.* at 5-6.) This allegation is addressed more fully in the arguments section of this brief. Respondents further dispute Petitioners' allegation that the internal affairs investigation of the incident did not address DPD's procedures regarding the use of OC spray, an LVNR, or other uses of force. (*See id.* at 5.)

Respondents dispute Petitioners' allegations that the City has delegated policymaking authority to the Chief of Police "and/or" police department, and that the Chief of Police is "the highest ranking and final authority for matters of DPD, and therefore Dallas, police procedures and policies." (*See id.* at 6.) Indeed, the very provision of the Dallas City Charter that Petitioners quote states that the Police Chief's direction and control of the police department is "'subject to the supervision of the city manager, and also subject to such rules, regulations, and orders as the city manager may prescribe. . . .'" (*Id.* at 6

(quoting Dallas City Charter ch. XII, § 2(1)).) [4] These allegations are addressed more fully in the arguments section of this brief.

ARGUMENTS FOR DENYING THE PETITION

A. The Court of Appeals' Holding that Petitioners Failed to Identify a Municipal Policy that Caused a Constitutional Violation, Along with that Court's Concomitant Refusal to Hold that a Police Chief's Adoption of the Findings and Recommendations of an Internal Affairs Investigation into an Officer's Conduct Constitutes a Ratification of or Policy Statement Regarding that Conduct, Does Not Merit Review by this Court

1. Petitioners Have Not Established a Compelling Reason for Granting the Writ

Petitioners request that this Court review the court of appeals' opinion affirming the summary judgment in favor of the City. (Pet. at i, 1.) Rule 10 of the Supreme Court Rules provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither

[4] The magistrate judge, in a footnote to his recommendation that summary judgment be granted in favor of the City, stated that, even if Petitioners had identified an unconstitutional policy, they had not shown that the City's department chiefs are policymakers. (Supp. App. at 22 n.13.)

> controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
> >
> > . . . .
> >
> > (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Sup. Ct. R. 10. Petitioners have not asserted that the writ should be granted for any of the reasons set forth in Rule 10; instead, they argue that a writ is appropriate "because citizens require guidance from this Court regarding the *external* significance of the results of an [sic] IA findings, recommendations, and reports – to what extent to [sic] they effect [sic] the relationship between the citizen and the state?" (Pet. at 8 (emphasis in original).) This argument continues with the following statement:

> The important question that Petitioners bring to the Court's attention is, what is the legal effect of a Dallas Police Chief's decisions in connection with an IA investigation? In particular, to what extent, if any, does his decision to adopt the findings and recommendations of the IA Report constitute an official policy statement?

(*Id.* at 9.) And finally, Petitioners conclude that:

> Petitioners are not asking the Court to grant a writ of certiorari to write new law but, rather, to interpret the meaning of current law in a particular, but common, scenario – what is the legal significance of an IA report (containing findings and recommendations) adopted by a Police Chief. Because this scenario is a frequent one, the issue is one of importance and worthy of this Court's attention.

(*Id.* at 16.)

Petitioners have not alleged that the court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. Nor have they alleged that the court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

To the extent the Petition can be construed as an argument that the court of appeals has decided an important question of federal law that has not been, but should

be, settled by this Court, which is one of the considerations for granting review contained in Rule 10, that argument fails. Petitioners ask this Court to hold that a municipal police chief's decision – following an internal investigation conducted *after* an incident in which a police officer allegedly violated *police department procedures* – that the officer did not violate those procedures is a ratification of the officer's conduct and thereby becomes an official policy of the municipality giving rise to municipal liability under 42 U.S.C. § 1983 for causing a *constitutional* violation. The important questions of federal law raised by Petitioners, however, have already been settled by this Court.

First, the Court has defined "municipal policy" in the context of municipal-liability claims brought under § 1983. *See, e.g., Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690-91, 694 (1978). Second, the Court has set out the standards for determining who is a policymaker. *See, e.g., City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988). Third, the Court's decisions require that a plaintiff establish a causal connection between the municipal policy and the asserted constitutional deprivation. *See, e.g., Board of the County Comm'rs v. Brown*, 520 U.S. 397, 400 (1997). And fourth, the Court has established that, before municipal liability under § 1983 can be imposed in cases involving a facially-lawful municipal policy, a plaintiff must show that the policymaker was deliberately indifferent to an obvious consequence that its action would result in constitutional violations. *See, e.g., Brown*, 520 U.S. at 407.

As shown below, the application of this Court's decisions to the questions presented by Petitioners establishes that a police chief's post-incident disciplinary decision is not a municipal policy under § 1983. The court of appeals

properly followed this Court's decisions in reaching its holding although, as the court of appeals' opinion reflects, it was only necessary to determine that Petitioners had failed to identify a municipal policy under *Monell* before affirming the summary judgment in favor of the City. (App. at 10.)

To be sure, Petitioners have failed not only to establish the existence of any of the reasons set forth in Rule 10 for granting a writ of certiorari, but also to present a legal basis for seeking, under the guise of presenting an "important" issue, to have this Court rewrite its well-established standards regarding liability of municipalities under 42 U.S.C. § 1983. The Court should therefore deny the Petition.

2. The Court of Appeals' Correctly Applied this Court's Precedents in Holding that Petitioners Failed to Identify a Municipal Policy that Caused a Constitutional Violation

a. The City's Policymaker Is the Dallas City Council

The court of appeals held that Petitioners failed to identify a municipal policy that caused a constitutional injury, (App. at 10), and therefore did not address Petitioners' argument that the City's Chief of Police is a policymaker or the City's response to that argument.[5] (*Id.*)

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[5] As previously noted, the magistrate judge stated that, even if Petitioners had identified an unconstitutional policy, they had not

(Continued on following page)

Because, however, Petitioners' argument to this Court is premised in its entirety on their assertion that the City's Chief of Police is a policymaker, Respondents address that issue here.

Petitioners allege that '[t]he City of Dallas has delegated policymaking authority to the Police Chief and/or Police Department under Chapter XII . . . of the Dallas City Charter. . . ." (Pet. at 6.) They further allege that the Police Chief is "the highest ranking and final authority for matters of DPD, and therefore Dallas, police procedures and policies. . . ." (*Id.*) In connection with their contention, Petitioners assert that "[f]or purposes of this petition, Police Chief Bolton *is* a policy-maker. The only issue here is, when are his acts 'policy' that bind the City of Dallas?" (*Id.* at 8 (emphasis in original).) Petitioners' position, even if only for purposes of this Petition, is simply incorrect.

The question of who is the policymaker of a municipality is one of state law. *Praprotnik*, 485 U.S. at 124. The authority to make municipal policy is necessarily the authority to make *final* policy. *Id.* at 127 (citation omitted).

As provided by the Dallas City Charter, all powers conferred on the City of Dallas, unless provided otherwise, are exercised by the City Council. Dallas City Charter ch. III, § 1. The Charter also provides for a council-manager form of government, wherein the City Manager is appointed by the City Council and is responsible for the proper administration of City affairs. *Id.* ch. VI, §§ 1, 2. The City Manager is subject to the supervision of the City

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shown that the City's department chiefs are policymakers. (Supp. App. at 22 n.13.)

Council and can be removed at the will and pleasure of the City Council by a two-thirds vote. *Id.* ch. VI, § 1.

Chapters VI and XII of the Charter provide that the Chief of Police be appointed by the City Manager and subject to the City Manager's supervision and control. *Id.* ch. VI, § 2; ch. XII, § 2. And, contrary to Petitioners' assertions, the Chief of Police does not have final authority over the discipline of Dallas police officers – the Charter provides for a review by the City Manager, and for appeal of the City Manager's decision to a civil service trial board. *Id.* ch. XII, § 4.

Under Texas law, the City's policymaker is the City Council, and it has not delegated policymaking authority to the Chief of Police. In addition, police department procedures and orders are not the policy of the City because they were not officially adopted and promulgated by the City Council.

b. Petitioners Have Not Identified a Municipal Policy

Petitioners argue that they raised a genuine issue of material fact in the district court as to whether the City is liable on the basis that it "ratified" the officers' conduct. (*See* Pet.) It must first be noted that Petitioners contend that the "ratification" is the Police Chief's decision, even though, as shown above, the Police Chief is not the City's policymaker. Second, Petitioners' argument completely ignores the requirement that municipal liability under § 1983 must be based on a municipal policy or custom. That requirement is one reason Petitioners have cited no cases to support their argument that an after-the-fact investigation establishes municipal policy. (*Id.*) Petitioners

do cite *Prunty v. Arkansas Freightways, Inc.*, 16 F.3d 649, 653 (5th Cir. 1994), for the definition of "ratification." *Prunty*, however, deals with "ratification" in the context of a suit against a private employer. *Id.* It is inapplicable to a § 1983 municipal-liability claim.

According to Petitioners, the Police Chief's adoption of DPD's post-incident internal investigation, insofar as the officers were found to have not violated DPD orders or procedures, became a municipal policy that the officers acted pursuant to and which could then serve as the basis for municipal liability under § 1983. (Pet. at 10-16.) The magistrate judge, in his recommendation that summary judgment be granted in favor of the City, appropriately characterized that argument as "circular" and correctly noted that it "obscures the fact that [Petitioners] seek to impose liability on the City for actions taken by individual police officers and paramedics on the scene." (Supp. App. at 20.) And, as the court of appeals held, this type of *respondeat superior* or vicarious liability cannot be imposed on the City in a claim under 42 U.S.C. § 1983. (App. at 10.) *See Monell*, 436 U.S. at 691, 694.

Since it is abundantly clear that no basis exists for municipal liability, Petitioners seek to expand, with no authority, this Court's rulings regarding the requirements for imposing municipal liability by including a new basis for liability – that the constitutionality of a written policy is not determined by what it says, but rather by what a plaintiff believes a municipal employee (not the policy-maker) has interpreted it to mean. (*See* Pet. at 11-13, 14-15.)

Petitioners contend that the Police Chief's "interpretations" of DPD orders and procedures, i.e., his decisions

concerning internal disciplinary complaints, become a body of municipal policies analogous to judicial case law. (*Id.* at 11.) Such fallacious reasoning is precisely why this Court has been so adamant that only a formal policy adopted by the municipality's policymaker or a persistent, widespread custom attributable to the policymaker can serve to impose municipal liability.

The Petition contains a long string citation ostensibly in support of Petitioners' contention that summary judgment in favor of the City was inappropriate because they have raised a genuine issue of material fact as to ratification. (Pet. at 13.) Petitioners first cite *City of St. Louis v. Praprotnik*, 485 U.S. at 127. The passage quoted by Petitioners, however, refers to ratification by the *authorized policymakers*, which, as shown herein, is the Dallas City Council, not the Chief of Police.

Hyland v. Wonder, 117 F.3d 405 (9th Cir. 1997), deals with the question of who is the policymaker in the City and County of San Francisco, California, and the delegation of policymaking authority there, and is totally inapplicable to those questions for Dallas, Texas. And while *David v. City and County of Denver*, 101 F.3d 1344, 1358 (10th Cir. 1997), also deals with policymaker questions in another state, the Tenth Circuit stated that any ratification that might exist would require action by the final policymaker. In the instant case, as has been pointed out numerous times, the final policymaker is the Dallas City Council, not the Chief of Police.

Petitioners quote from *Skevofilax v. Quigley*, 586 F. Supp. 532, 544 (D.N.J. 1984), as follows: " 'Where a municipality's procedure of reprimand is so inadequate as to ratify unconstitutional conduct, the municipality may

be liable under § 1983.'" (Pet. at 13 (quoting *Skevofilax*, 586 F. Supp. at 544).) Respondents note that the court in that case referred to a *procedure* of reprimand, not the existence or absence of reprimand in a particular situation. In addition, a continued reading of that case reveals that the court is referring to whether a failure to discipline or control officers for *previous* incidents in the face of knowledge of their propensity to commit violations can create a municipal custom. The court was not addressing an *after-the-fact* failure to discipline. Finally, Petitioners cite two district court cases that have no applicability here.

c. Petitioners Have Not Established a Causal Connection Between the Police Chief's Action and Their Alleged Constitutional Injury

Even if Petitioners have identified a municipal policy, they must also establish that there was a causal connection between that policy and their alleged constitutional deprivation. In *Board of the County Commissioners v. Brown*, this Court stated that "in enacting § 1983, Congress did not intend to impose liability on a municipality unless *deliberate* action attributable to the municipality itself is the 'moving force' behind the plaintiff's deprivation of federal rights." 520 U.S. at 400 (citing *Monell*, 436 U.S. at 694) (emphasis in original). The Court was concerned that failure to adhere to the rigorous requirements of culpability and causation in a § 1983 municipal-liability case would cause a collapse into *respondeat superior* liability. To prevent such an occurrence, "a court must carefully test the link between the policymaker's inadequate decision and the particular injury alleged." *Brown*,

520 U.S. at 410. Testing that link in this case shows that Petitioners' claims are, in fact, improperly based on *respondeat superior*.

Because Petitioners failed to identify a formal City policy, the lower courts correctly analyzed Petitioners' municipal-liability claim under the "custom or practice" standard. (App. at 10; Supp. App. at 19-20.) Under that standard, one such incident is insufficient to establish municipal liability. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24 (1985). Petitioners have failed to establish a claim for municipal liability based on an unlawful persistent, widespread practice attributable to the City's policymaker.

d. Petitioners Have Not Shown that the City's Policymaker Acted with Deliberate Indifference

If a plaintiff seeks to hold a municipality liable under § 1983 based on a municipal policy other than a formal, written policy that is unconstitutional on its face, the plaintiff must establish that the policymaker's action with respect to the policy was taken with deliberate indifference to an obvious consequence that its action would result in constitutional violations. *See Board of the County Comm'rs v. Brown*, 520 U.S. at 407 (1997). In this case, even if Petitioners have identified a municipal policy that caused them a constitutional injury (which Respondents deny), they have failed to show that the policymaker acted with deliberate indifference.

CONCLUSION

Petitioners' arguments fail to present a compelling reason for granting a writ of certiorari because the court of appeals correctly applied a properly stated rule of law to the summary judgment facts and reached the correct decision. Neither of the questions presented by Petitioners raises an important question of federal law that has not been, but should be, settled by this Court. Additionally, there is no conflict among the courts of appeals regarding any of the issues presented, and the court of appeals did not decide the case in a way that conflicts with relevant decisions of this Court. The Court should therefore deny the Petition for Writ of Certiorari.

Respectfully submitted,

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